

CORRECTED

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ENVIRONMENTAL CONTROL BOARD

BOARD MEETING

VIA VIDEO CONFERENCE

100 Church Street, New York, New York

June 1, 2023

9:32 a.m. to 10:27 a.m.

June 1, 2023

MEMBERS PRESENT:

Asim Rehman, Esq. - Commissioner/Chief Administrative Law Judge, OATH, Chair/Executive Director, OATH ECB
Shamonda Graham - Department of Buildings (DOB)
Joseph Gregory, Esq. - New York City Fire Department (FDNY)
Elizabeth Knauer, Esq. - Appointed Member (Water)
Russell Pecunies, Esq. - Department of Environmental Protection (DEP)
Harminderpal Rana, Esq. - Department of Health and Mental Hygiene (DOHMH)
Matthew Schneid, Esq. - Appointed Member (Real Estate)
Thomas D. Shpetner, Esq. - Appointed Member (Business)
Matthew Smith, Esq. - New York City Police Department (NYPD)
Douglas S. Swann - Appointed Member (Air)
Jarrold Whittington - Appointed Member (Noise)

ALSO PRESENT:

Rachel Amar - Senior Advisor to Commissioner, OATH
Sola Best, Esq. - Assistant General Counsel, OATH
John Castelli, Esq. - Deputy Commissioner for Legislative Affairs, OATH
Cindy Chen - Analyst, Office of Management and Budget (OMB)
Kelly Corso, Esq. - Assistant Commissioner/Hearings Division Adjudications, OATH
Eric Eisenberg - Member of Public
Brian Gatens - Member of Public
Yosef Gross - Legal Intern, OATH
Timothy Jones, Esq. - Senior Counsel, OATH
Edward Kiernan, Esq. - Special Counsel, Mayor's Office of Appointments (MOA)
David C. Kim, Esq. - Assistant General Counsel, OATH
Alexandra Lao - Legal Intern, OATH
Sidney Lee - Legal Intern, OATH
Hope Peraria - Legal Intern, OATH
Peter Schulman, Esq. - Deputy Commissioner/Appeals Division, OATH
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division, OATH
Tom Southwick, Esq. - Assistant Commissioner/Appeals Division, OATH

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**Olga Statz, Esq. - Deputy Commissioner/General Counsel,
OATH**

Lisa Urban - Member of Public

Andrew Woodle - Legal Intern, OATH

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2 (The board meeting commenced at 9:32
3 a.m.)

4 ASIM REHMAN, ESQ., COMMISSIONER/CHIEF
5 ADMINISTRATIVE LAW JUDGE, OATH, CHAIR/EXECUTIVE
6 DIRECTOR, OATH ECB: Thank you, everyone. I'd
7 like to call our June 1st Environmental Control
8 Board meeting to order. I hope you're all doing
9 well. And David from the GC Unit, can you please
10 do our roll call so we can verify quorum?

11 DAVID C. KIM, ESQ., ASSISTANT GENERAL
12 COUNSEL, OATH: Okay. Good morning, all. We
13 will start with Commissioner Asim Rehman.

14 MR. REHMAN: Present.

15 MR. KIM: Shamonda Graham? Thank you.
16 I can see you, yeah. Joseph Gregory?

17 JOSEPH GREGORY, ESQ., NEW YORK CITY FIRE
18 DEPARTMENT (FDNY): Present.

19 MR. KIM: Thank you. Elizabeth Knauer?

20 ELIZABETH KNAUER, ESQ., APPOINTED MEMBER
21 (WATER): Present.

22 MR. KIM: Thank you. Madelynn Liguori?
23 Harminderpal Rana?

24 HARMINDERPAL RANA, ESQ., DEPARTMENT OF

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HEALTH & MENTAL HYGIENE (DOHMH): Present

MR. KIM: Thank you. Russell Pecunies?

RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP): Here.

MR. KIM: Thanks. Matthew Schneid?

MATTHEW SCHNEID, ESQ., APPOINTED MEMBER (REAL ESTATE): Present.

MR. KIM: Thomas Shpetner?

THOMAS D. SHPETNER, ESQ., APPOINTED MEMBER (BUSINESS): Present.

MR. KIM: Thank you. Matthew Smith?

MATTHEW SMITH, ESQ., NEW YORK CITY POLICE DEPARTMENT (NYPD): Present.

MR. KIM: Thank you. Douglas Swann?

Jarrold Whittington?

JARROLD WHITTINGTON, APPOINTED MEMBER (NOISE): Present.

MR. KIM: Thank you. We have a quorum, 10 out of 12.

MR. REHMAN: Thank you very much.

Before we start, I just want to acknowledge that we have a number of members of various groups who are here observing today, including OATH's, a few

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2 of summer -- OATH's summer legal interns, so they
3 can see a little bit about the business that we
4 engage in, as well as some other members of the
5 public. We welcome everyone to our public ECB
6 meetings.

7 Well, I'd like to start with a motion to
8 adopt the minutes of the April 2023 meeting.
9 Before I request the motion, I just want to
10 clarify that a copy of the minutes was initially
11 circulated and then, yesterday, David Kim from
12 our GC Unit circulated an updated version of the
13 minutes that included edits that I had proposed,
14 and that was at about 5:00 p.m. yesterday, and
15 the edits were flagged for convenience in track
16 changes. I just want to make sure that folks
17 have had the opportunity to review those changes,
18 since that's the version that we will be voting
19 on adopting. And, if it passes, then they will
20 be, for the record, adopted in a clean version,
21 without those track change notations.

22 Does anyone have -- was anyone unable to
23 review those edits that were circulated yesterday
24 at 5:00 p.m.? And does anyone have any concerns

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2 they'd like to raise about the edits that were
3 circulated yesterday, or the minutes, generally?
4 Any other corrections? Okay, I'd like to ask for
5 a motion to adopt the minutes of the April 20,
6 2023, meeting. I see a motion from Shamonda. A
7 second? Tom, thank you. GC?

8 MR. KIM: Okay. Are there any
9 objections to the motion approving the minutes of
10 the April 20, 2023, ECB Meeting? Hearing none,
11 seeing none, the motion is approved unanimously.

12 MR. REHMAN: Thank you, David. I'll now
13 turn it over to Russ Pecunies from DEP to walk us
14 through several requests for cease and desist
15 orders from the DEP. Russ?

16 MR. PECUNIES: Yeah, thank you. So, for
17 this month's meeting, DEP is asking the Board to
18 approve three requests for cease and desist
19 orders.

20 We'll do the noise one first. This
21 pertains to 3420 Broadway in Manhattan. The
22 respondent's name is -- corporate name is Solo
23 Nosotros, LLC. I believe they do business as Bar
24 and Billiards or Billiards and Bar. I've seen it

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2 online both ways. This location has been the
3 subject of 311 noise complaints since about a
4 year ago.

5 The original violation was issued on
6 June 17th of last year for excessive noise in the
7 form of music, as measured in the complainant's
8 apartment in violation of section 24-231(a) of
9 the Noise Code. And the respondent defaulted on
10 that violation and is still in default as to that
11 violation.

12 A second summons was then issued in
13 November. That summons, the respondent
14 originally defaulted on. They have just recently
15 rescheduled that one to a date in October of this
16 year.

17 The third one was issued, based on an
18 inspection in February of this year. They had a
19 hearing date in April that they defaulted on.
20 And that violation continues to be in default.

21 And, finally, they were inspected again
22 on, on May 6th, so a little over three weeks ago.
23 And they were again in violation, with a hearing
24 date for the latest summons scheduled for August

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2 22nd.

3 Based on the repeated violations, the
4 failure to respond to these violations, and the
5 continued complaints regarding loud music from
6 this location, at this point, the Department is
7 requesting that the Board issue an order to cease
8 and desist.

9 MR. REHMAN: Thank you, Russ. Does any
10 -- we should go through these one by one. So --

11 MR. PECUNIES: Yeah, yeah.

12 MR. REHMAN: So, does anyone have any
13 questions for DEP regarding the presentation, or
14 the materials? Okay. I'd like to ask for a
15 motion to approve the request for a cease and
16 desist as related to Solo Nosotros, LLC.

17 MR. GREGORY: Motion.

18 MR. REHMAN: I see a motion from Joseph.
19 A second? I see a second from Harminderpal. And
20 let's go for a vote. David?

21 MR. KIM: Okay. Are there any
22 objections to approving the cease and desist
23 order? Seeing none, hearing none, the motion is
24 approved, approved unanimously.

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2 MR. REHMAN: Thank you.

3 MR. PECUNIES: Alright.

4 MR. REHMAN: Russ, which one would you
5 like to do next?

6 MR. PECUNIES: Yeah, thank you. So the
7 second one we'll do is the air one for 98
8 Montague Street in Brooklyn.

9 MR. REHMAN: Yeah.

10 MR. PECUNIES: The respondent here is 98
11 Montague, LLC. This location has a boiler, which
12 they use to provide heat and hot water to the
13 building. The permit, the Air Code permit on
14 this boiler has been expired since 2019. They
15 were issued a summons in July of 2021, which they
16 stipulated to in December of 2021, but did not
17 come into compliance. So they were given another
18 summons in October of last year, which they
19 stipulated to in March. But, again, they have,
20 still have not come into compliance by renewing
21 the permit.

22 So, at this point, since the issuance of
23 two summonses has not caused them to come into
24 compliance, the Department is requesting that the

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2 Board issue a cease and desist as a means of
3 getting them to come into compliance, since the
4 issuance of another summons at this point would
5 seem to be, if not counterproductive, not
6 effective.

7 MR. REHMAN: Thank you, Russ. And any
8 questions for Russ? Elizabeth.

9 MS. KNAUER: Thank you. I'm, I'm just
10 wondering why -- like what's the issue? Why
11 aren't they just seeking renewal of the permit?
12 Is there, is this, is this a No. 4 boiler? Or
13 that they, that it can't be renewed? Or is there
14 some --

15 MR. PECUNIES: No, they are actually
16 permitted to use natural gas with a No. 2 backup.
17 So they're not subject to the, to the impending
18 ban of No. 4. I, I really have -- I don't think
19 we have any idea why they have just stipulated to
20 these two summonses and not done anything to fix
21 the problem, which is why, you know, we're asking
22 for a cease and desist order, since this will
23 really, you know, make it obvious to them that,
24 you know, if, if they're, for some reason,

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2 looking to just pay the fines and not renew the
3 permit, this will make it clear to them that they
4 have to renew the permit.

5 MR. REHMAN: Russ, thank you. So, in
6 reading this, I looked at it and I was trying to
7 look at it with, with very fresh eyes. And
8 hearing what you laid out makes sense. But, but
9 let me ask a question that maybe, it may be just
10 an obvious question, but better for you to
11 respond to it than me make assumptions.

12 The last time that DEP was on the scene
13 and saw that they were operating something that
14 was in violation was in October. We know that
15 they have not renewed their permit. But what is
16 our basis for believing that they're still
17 operating that device, that there's actually
18 something that they need to cease and desist?
19 Because there hasn't been -- I'm not necessarily
20 suggesting that DEP do another inspection, but
21 it's been now, you know, more than eight months
22 since someone, or, or seven months since someone
23 from DEP was there to actually witness that.

24 Okay, well, you know, the other

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2 possibility in the realm of possibilities is
3 they'd shut down operations and they wouldn't
4 need the permit because they're not doing
5 anything. So how do we know that there's
6 something still happening that one needs to cease
7 and desist?

8 MR. PECUNIES: Well, I mean, this is a
9 significant building and these are significant
10 boilers. These are 12,600 BTU each boilers. I,
11 I believe it's a big building. I don't think the
12 building has just like gone away.

13 MR. REHMAN: Yes.

14 MR. PECUNIES: I, I, I, you know, I mean
15 we, we could do another inspection. But, I mean,
16 they just stipulated to a violation in March.
17 There's, there's --

18 MR. REHMAN: Yeah.

19 MR. PECUNIES: -- no reason to believe,
20 at this point, that the equipment is not still
21 there and that it's not still working. And, in
22 any case, they could, if, if they have, for some
23 reason, replaced this equipment, then they can
24 show that at the cease and desist hearing and the

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2 cease and desist order would, would, would go
3 away since the equipment in question would no
4 longer be there.

5 MR. REHMAN: Thank you, Russ. That's
6 very helpful and that, that addresses my
7 question. It, it also just had me wondering, and
8 this is not a, it's not a request as much as it's
9 a, it's a suggestion. In thinking about how we
10 document these things, having you on the call
11 here is clearly helpful to flush out some of
12 these details. But looking at the papers alone,
13 when I look at the affidavit or statement, the
14 sworn statement of Alyssa Preston, you know,
15 paragraph number 4, respondent continues to be in
16 violation, it, it just, it lands a little too
17 much as a conclusion. And if you, if you and
18 your team think that there are ways to add a
19 little more verbiage to that to kind of explain
20 why there's a basis for saying it's ongoing, that
21 might be helpful. It may not be necessary. It's
22 really, I think, for you and your team. I'm just
23 relaying it as a suggestion, as someone who is
24 maybe not looking at these type of documents

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2 every day to how it reads. Because it, it raised
3 that question for me. Well, how do we know that
4 respondent continues to be in violation?

5 And so, you know, I share that with you
6 only as a suggestion in case you and your team
7 think that there might be additional language to
8 use, --

9 MR. PECUNIES: Sure. We'll, we'll --

10 MR. REHMAN: -- again, [unintelligible]
11 [00:14:48].

12 MR. PECUNIES: -- we'll take a look at
13 that and, and we'll take a look at maybe the
14 possibility of, of doing some kind of an
15 inspection before we, we ask for the cease and
16 desist order, to confirm that the equipment is
17 still there and still in use.

18 These, these affidavits are sort of a,
19 it's a standard affidavit that's been in use for
20 probably 20 years. So we --

21 MR. REHMAN: Yeah.

22 MR. PECUNIES: -- we, we, we can
23 certainly take another look at it.

24 MR. REHMAN: Yeah. And, again, I'm

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2 being very light with this suggestion. I, I
3 don't want to imply, from where I sit or on
4 behalf of the Board, that DEP needs to use the
5 resources to send out its inspectors every time
6 it wants to do one of these things. But if
7 there's any way of, of just, as I was trying to
8 do, looking at the affidavit with fresh eyes to
9 see how can we make the language a little
10 stronger about the continuing violation. You
11 know, please con-, please take it under
12 advisement --

13 MR. PECUNIES: Sure.

14 MR. REHMAN: -- and I'll defer to DEP on
15 that. Otherwise, I have no other questions.
16 Does anyone else have any questions with respect
17 to the cease and desist order request on 98
18 Montague, LLC? Elizabeth?

19 MS. KNAUER: I'm sorry. Just, just one
20 more question. In the, when they did stipulate
21 to the, I think you said the first violation, did
22 they, did that stipulation include an agreement
23 that they would renew the permit by a certain
24 date?

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2 MR. PECUNIES: Stipulations on this
3 section, on 123, include an order from the judge
4 that they comply, compliance within 30 days. So
5 it, it's part of the stipulation, yes.

6 MS. KNAUER: Alright. And so,
7 obviously, that 30 days has passed. I, I just
8 found it curious that, then, the -- I think you
9 said that there was another, a hearing on a, on
10 a, on a subsequent summons that was adjourned
11 until October?

12 MR. PECUNIES: No, that's the, that was
13 the previous, on the noise one.

14 MS. KNAUER: Oh, okay. Sorry, sorry.
15 They're -- I'm sorry about that.

16 MR. PECUNIES: Yeah.

17 MS. KNAUER: Okay, great.

18 MR. PECUNIES: No, but they, on this
19 one, on Montague, so they have stipulated twice,
20 once last year and once in March. And, as part
21 of both of those stipulations, they were ordered
22 to comply within 30 days.

23 MS. KNAUER: Okay, okay. Thank you.

24 MR. PECUNIES: Mm-hmm.

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2 MR. REHMAN: Any other questions or
3 comments? Okay, do I have a motion to vote on
4 the request for a cease and desist regarding 98
5 Montague, LLC? I see Jarrod. And a second? A
6 second from Harminderpal. And David?

7 MR. KIM: Okay. Are there any
8 objections to approving the cease and desist
9 order? Seeing none, hearing none, the motion is
10 approved unanimously.

11 MR. REHMAN: Russ?

12 MR. PECUNIES: Yeah.

13 MR. REHMAN: The third?

14 [CROSSTALK] [00:17:45]

15 MR. REHMAN: -- the respondent?

16 MR. PECUNIES: Alright, yeah. So this
17 one, this one is a similar situation. The
18 respondent here is Columbia University. The
19 premises is 600 W. 113th Street. They have a
20 boiler that has been out of compliance since,
21 technically, since 2008.

22 There have apparently been a number of
23 exchanges of paperwork between engineers and DEP
24 over the years, which have not resulted in them

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2 receiving the certificate of operation that's
3 required for this equipment. This is a 10.5
4 million BTU boiler, so it's a, it, it, it's a,
5 it's a big one. And they have more recently been
6 given two summonses. One was issued in October
7 of 2021. The second one was issued in September
8 of last year, and they have defaulted on both of
9 them, but paid the default penalty on both of
10 them. So we know that they got them, because
11 they paid the penalty.

12 The, the most recent one was paid after
13 they defaulted on March 1st of this year. And,
14 again, this is another situation where we're not
15 sure that the issuance of another summons would
16 be productive, given that they've been given two
17 summonses, that they've responded to both of
18 them, paid both of them. Both of them included
19 orders to comply within 30 days. And so, at this
20 point, we feel that the most productive course
21 would be for them to get a cease and desist
22 order, which would require them to demonstrate to
23 a hearing officer that they had come into
24 compliance.

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2 MR. REHMAN: Any questions for Russ?
3 Harminderpal? You're muted.

4 MR. RANA: Sorry. Counsel, I just had a
5 question on the cover page of the memos for all
6 three of them. There is a, the last paragraph
7 references special hearings. Is that, would that
8 be pursuant to language in the order itself? Or
9 is that based on a separate statutory provision?

10 MR. PECUNIES: The, the order itself
11 would, would be the order to appear at the
12 hearing. So that would have a date and time for
13 them to appear in front of the hearing officer.

14 MR. RANA: Right. So it's the order
15 itself that allows them the opportunity to be
16 heard at this, what you're describing as a
17 special hearing. Is that right?

18 MR. PECUNIES: Yes. Correct.

19 MR. RANA: Okay, just wanted to clarify
20 that. Thank you.

21 MR. PECUNIES: Yep.

22 MR. RANA: That's it.

23 MR. REHMAN: Any other questions for
24 Russ? Russ, just to pick up on my earlier

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2 comment, you're, you're adding -- what you've
3 since added was this idea that, in response to
4 Elizabeth's question, that the stipulation says
5 that, within 30 days, X action should happen.
6 That might be the type of thing that could be
7 useful additional language to the affidavit, that
8 they stipulated that they would do X. X has not
9 yet happened. That would, I think, allow -- it
10 would give a little more heft to the, the
11 request. Again, just a suggestion if you think
12 that --

13 [CROSSTALK] [00:21:47]

14 MR. PECUNIES: Yeah, sure, we can do
15 that. I, I, I would point out that in the, in
16 the summary of the violation history, under the
17 compliance column, --

18 MR. REHMAN: Yes.

19 MR. PECUNIES: -- it, it, it does
20 indicate within 30 days. But, yeah.

21 MR. REHMAN: Yes, I see that.

22 MR. PECUNIES: We, we, we'll take a look
23 at adding some language to the, to the affidavit,
24 sure.

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2 MR. REHMAN: Good. Any other questions
3 or comments for Russ with respect to respondent,
4 Trustees of Columbia University? Can we have a
5 motion to vote on the request for a cease and
6 desist regarding respondent, Trustees of Columbia
7 University? I see a motion from Shamonda. A
8 second? I see a second from Joseph. Thank you.
9 David, let's move to a vote.

10 MR. KIM: Okay. Are there any
11 objections to approving the cease and desist
12 order? Hearing none, seeing none, the motion is
13 approved unanimously.

14 MR. REHMAN: Thank you. And thank you,
15 Russ, --

16 MR. PECUNIES: Alright, thanks.

17 MR. REHMAN: -- for working us through
18 the details of those matters.

19 MR. PECUNIES: Thank, thank you very
20 much. Thank you.

21 MR. REHMAN: Yep. I'd like to request a
22 motion to go into Executive Session. I see a
23 motion from Matt. I see a second from Tom.
24 David?

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2 MR. KIM: Are there any objections to
3 the Board's going into Executive Session at this
4 time? Seeing none, hearing none, we can now
5 enter Executive Session.

6 MR. REHMAN: Okay. For those who are
7 new to the ECB process, the Board members are
8 going to go into Executive Session, and other
9 members will be held, I believe, in a waiting
10 room until we return.

11 PETER SCHULMAN, ESQ., DEPUTY
12 COMMISSIONER/APPEALS DIVISION, OATH: Before we
13 do, I just wanted to note that Doug Swann has
14 joined the meeting and he was present for all of
15 the votes. Just for the record. And I'll also
16 just note that, post-Executive Session, the only
17 thing on the agenda is picking the next date for
18 the Board meeting, for anybody who is going into
19 the waiting room.

20 MR. REHMAN: There is an additional item
21 not on the formal agenda. General Counsel, Olga
22 Statz, is going to be providing some information
23 regarding the Open Meetings Law, as well, after
24 we return from Executive Session.

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2 MR. SCHULMAN: Oh, I apologize. Sorry.

3 MR. REHMAN: No worries.

4 [OFF THE RECORD]

5 [ON THE RECORD]

6 MR. REHMAN: Okay, we are now back in
7 Public Session for our June 1, 2023, ECB meeting.
8 The next item on the agenda is with the General
9 Counsel, Olga, Olga Statz, to discuss the Open
10 Meetings Law. Olga?

11 OLGA STATZ, ESQ., DEPUTY COMMISSIONER/
12 GENERAL COUNSEL, OATH: Hi. Hi, everybody. It's
13 nice to see everyone again. I just have a few
14 notes. I want to keep you up to date on certain
15 movements in the Open Meetings Law that are going
16 to be relevant for us going forward.

17 Governor Hochul amended certain portions
18 of the Open Meetings Law to make permanent
19 certain of the changes that were instituted
20 during the pandemic. And I just want to go
21 through a few of those so that you know, going
22 forward, what the, what the meetings are going to
23 look like.

24 So, essentially, the changes, the

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2 changes create essentially three situations. (1)
3 We're allowed to continue meeting as we did
4 before the pandemic, meaning everyone can gather
5 together in the, in a space open to the public,
6 in-person, so we can proceed as if nothing had
7 happened in is-, in terms of the pandemic.

8 (2) This is where it starts to get
9 different. We're entitled, through video
10 conferencing, to meet in separate locations that
11 are open to the public, as long as we're
12 connected through video conferencing. So, for
13 example, let's say half of, half of the Board
14 members can meet in Manhattan and another half
15 can meet in Long Island City, as long as they
16 meet in, in, in two of OATH's public spaces that
17 allow for the presence of members of the public
18 and they're connected by video conferencing. So
19 this, now, this change has been made permanent.

20 But I think, and the third thing that,
21 that has happened, and this is the most unusual
22 thing, and the thing that I want to, to
23 emphasize, is there a possibility under this law
24 for a minority of the Board members to appear by

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2 remote means from a location that is not open to
3 the public, meaning their homes or their offices.
4 If those, those Board members can show ex-, what,
5 what's called in the statute extraordinary
6 circumstances that would require them to
7 participate in a remote location that is not open
8 to the public.

9 Now, the, the statute sets out a few of
10 the, of the events that they consider
11 extraordinary circumstances. They include
12 disability, illness, caregiving, and other
13 unexpected events that would prevent an
14 individual from appearing. So that means.

15 However, one thing that's important to
16 note is that, although that member who has been
17 granted that waiver for that instance to appear
18 by remote means in a private location, that
19 person can fully participate and vote during the
20 meeting, that person's presence does not count
21 toward the quorum. So it, so the, the quorums
22 have to be -- so there have to be enough members
23 of the Board to form a quorum in public
24 locations, either one public location or several

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2 public locations, and, then, that other
3 individual will be allowed to participate by
4 remote means. So, no matter what happens, that
5 person will not be counted toward the quorum.

6 Let's see. What else is there? Oh,
7 another thing. Teleconferencing is not permitted
8 at all under this law. So that means that, at
9 all times when remote means are being used, the
10 Board members have to be on video. They have to
11 be seen and identifiable throughout the entire
12 meeting. So no one can simply call in any, any
13 longer. There has to be a video, proof of the
14 person's identity.

15 And then, the other things that we have
16 to pay attention to, and this is more for, for
17 OATH internal staff, is that the notice of a
18 meeting has to set out clearly both the, the
19 actual physical locations and the call-in
20 information or the, the, the contact information
21 for the video call. And, also, the minutes have
22 to reflect which Board members appeared remotely
23 and which Board members appeared in person.

24 And the other, the other thing that we

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2 have to keep in mind, and one of the main reasons
3 I wanted to have just a few minutes to give, to,
4 to catch, to catch you up on this, is that in
5 order to avail ourselves of the possibility of,
6 of Board members appearing remotely from private
7 locations, we, the Board would have to pass a
8 resolution saying that that is allowed. So the
9 statute itself does not give us that direct
10 authority. We have to pass a resolution.

11 So, before the next meeting, one of the
12 things that we're going to do is we're going to
13 circulate a resolution for your review that,
14 then, allows you, that, that will allow the Board
15 to, to, to avail itself of all of the different
16 methodologies that are set out in the law.

17 I'm happy to answer any questions. But
18 when I, when I send the resolution, I'm probably
19 going to write something up, also, for you guys.
20 Happy to answer questions now, though, if you
21 have --

22 MR. REHMAN: Olga, thank you for that
23 overview. Tom?

24 MR. SHPETNER: Just a quick one, and

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2 it's really procedural, not substantive. But are
3 we able to just like agree to it, seriatim, as a
4 Board? Or do we have to reconvene? I mean, I
5 don't, just don't know substantively, do you have
6 -- in other words, could, you know, I've never
7 encountered such a, a question. But would we
8 need to have a, a non-regular meeting or can we
9 just all sign off on it?

10 MS. STATZ: Well, you -- we have to pass
11 that res-, we would have to pass that resolution
12 during a meeting. How-, so --

13 MR. SHPETNER: I understand. Okay.
14 Okay, that was -- you answered my question.

15 MS. STATZ: So --

16 MR. SHPETNER: We can't --

17 MS. STATZ: -- the only --

18 MR. SHPETNER: Okay.

19 MS. STATZ: I'm sorry, go ahead, Tom. I
20 interrupted you.

21 MR. SHPETNER: You answered my question.
22 I, my question was whether or not, if we all read
23 the resolution, whether or not we could, in a
24 seriatim fashion, agree to -- yeah, you answered

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2 my question. I understand exactly what we're,
3 what we're doing. Thank you. That's perfect.

4 MS. STATZ: Yeah. So what -- but you do
5 bring up an important point that I want to ma-
6 that I want to make. So, at our next meeting,
7 not -- none of you would be able to, to avail
8 yourselves of the meeting from a remote location,
9 because the resolution would not have been
10 passed. So that's the only thing that someone
11 would not be able to do until the resolution is
12 passed. However, we could technically meet, half
13 of us in Manhattan, half of us in Long Island
14 City, as long as we met in a public place. That,
15 we can already do under the law. But we have to,
16 as, as you noted, we have to be in a meeting to,
17 to pass that resolution.

18 Any other questions?

19 MR. REHMAN: Shamonda?

20 SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS
21 (DOB): Can you circulate the law? I know I can
22 find it, but I'm sure you have it. Can you just
23 circulate it so we can through it before the
24 resolution?

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2 MS. STATZ: Oh, absolutely.

3 MS. GRAHAM: Thank you.

4 MS. STATZ: I'll, I'll circulate the
5 law. When I send the resolution around, I'll
6 send the copy of the statute, as well.

7 MS. GRAHAM: Thank you so much.

8 MS. STATZ: No problem.

9 MR. REHMAN: Matthew Schneid?

10 MR. SCHNEID: Hi, thanks. So what is a,
11 a public place for this purpose? If, if I open
12 up my law firm, for example, and say we're having
13 a meeting in the conference room and anyone could
14 attend, is that "public?"

15 MS. STATZ: You know, that's, that's a
16 good question. It's only -- I'm, I'm, I'm
17 presuming. I would have to do more looking into
18 it. I'm presuming that the off-, your, your,
19 your office would have to be open to the general
20 public. You would have to, your office location
21 would have to be po- post- posted in our public
22 notice. And, then, anybody off the street would
23 be able to walk into your office. That is what
24 my unders-, from my understanding of looking at

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2 this, that's what a public space is.

3 So, for us, for OATH, I'm figuring that
4 our all-around room that we have at 100 Church or
5 a, a large space, because we, I know we have some
6 big conference rooms in LIC. Maybe something
7 like that could be used, because any member of
8 the public could come in. But I would, I would
9 hesitate, unless -- I mean, I guess if you, if
10 you're willing to have people come in off the
11 street in your law office, I suppose we could, if
12 push came to shove, we could say that's a public
13 space, but I don't think that that's what they
14 were intending.

15 MR. SCHNEID: Got it.

16 MR. REHMAN: Olga, I have a few
17 questions. Thank you for the overview. What is
18 the effective date of these changes that you
19 walked us through?

20 MS. STATZ: I think it's Ju-, I'm not --
21 I don't remember exactly anymore. I think it's
22 June 19, June 18.

23 MR. REHMAN: Okay. So it would be in
24 force by the time of our next meeting?

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2 MS. STATZ: Yes.

3 MR. REHMAN: Okay.

4 MS. STATZ: So this was, this was --
5 this is our last hooray this, this way. So,
6 yeah, so maybe we should have brought some
7 streamers or anything, something like that, yeah.

8 MR. REHMAN: You know, there's a related
9 aspect to this, which I'm sure many of you are
10 familiar with, which are, there's the law on the
11 books and then there are the various mayoral and
12 gubernatorial executive, emergency executive
13 orders that have acted to suspend those laws.
14 And we recently saw, on the federal level, the
15 federal health agencies discontinue the extension
16 of the emergency orders as to COVID. And so, you
17 know, while I can't say for sure, I think we
18 should work under the assumption, or plan under
19 the assumption, just so we're planning ahead,
20 that between now and the next meeting something
21 may, of course, be lifted. I don't know, I can't
22 say. But if things are lifted at the mayoral and
23 gubernatorial levels, then, then, of course, we'd
24 be operating under the rules that Olga talked

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2 about for the next meeting.

3 Olga, my next question is, you made
4 reference to video links being made available.
5 If, if we were just meeting at 100 Church Street
6 or if we were meeting at two of OATH's public
7 locations where there would be video
8 conferencing, but those would be open to the
9 public, would we still need to publish some kind
10 of video link? Under what circumstances would we
11 have to publish people can join by phone or video
12 this way?

13 MS. STATZ: Well, the way I'm, the way I
14 think that the law would work is, if we all
15 gather at 100 Church in-person and, and if this
16 is open to the public, we would not have to
17 publish a video link, because --

18 MR. REHMAN: Okay.

19 MS. STATZ: -- people would just show up
20 at 100 Church and it would be like it was pre-
21 pandemic. However, I would, I would think that
22 if we, if we meet at 100 Church and in LIC, we
23 would have to be connected by video conference,
24 just to be able to meet. And once we're, once

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2 there's video conferencing involved, then the
3 public has to be involved, has to be connected to
4 the video conferencing as well. That's the way I
5 see that it would work. Because the whole point
6 of this is to make sure that however we're
7 meeting, the public has an opportunity to be
8 present.

9 MR. REHMAN: Right. Okay. And, and, of
10 course, that's something where, if there's
11 additional legal work the team needs to do on
12 that, you know, please feel free. I could see
13 that argument going both ways. I could see that
14 if it's two public locations and the only thing
15 connecting them is video, that that's a closed
16 video circuit. But, but again, I haven't read
17 the rules. You have and, and we'll defer to
18 your, your guidance on that.

19 MS. STATZ: But the, the thing is that
20 Board members have to be seen and heard --

21 MR. REHMAN: Yeah.

22 MS. STATZ: -- throughout. All Board
23 members have to be seen and heard throughout the,
24 the entirety of the meeting. So I would be hard

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2 pressed to see how a, a member of the public, if,
3 if they're in one room -- I, I guess they're, if
4 they're in the room, they would be able to see
5 what --

6 MR. REHMAN: Right.

7 MS. STATZ: -- we are seeing.

8 MR. REHMAN: Yes. And that's what --

9 MS. STATZ: I am -- mm-hmm.

10 MR. REHMAN: And that's what we would
11 also need to start preparing for on OATH's end.
12 To make sure, for example, at LIC, just to pick
13 an office, we have a conference room that would
14 allow for projection on the screen of everyone
15 sitting at 100 Church. You'd need to have kind
16 of cross visibility.

17 MS. STATZ: We, we, I think we have that
18 already.

19 MR. REHMAN: Yeah, good.

20 MS. STATZ: It's -- but Peter knows more
21 about that stuff than I do. But --

22 MR. REHMAN: Yeah, so we can plan for
23 that offline. But, but it's --

24 MS. STATZ: Yeah.

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2 MR. REHMAN: -- it sounds like the main,
3 one of the main takeaways is we should all -- you
4 know, things could happen. Again, the emergency
5 orders are still in place. But we should all
6 have the working assumption that our next meeting
7 is going to be one where we should, particularly
8 since we won't, wouldn't have passed the
9 resolution, the starting assumption is going to
10 be that we're all going to meet as an operating
11 Board at 100 Church Street, and that if OATH is
12 able to have a facility available that allows for
13 the kind of cross projec- projection of the
14 screens, we will notify members of the Board
15 that, okay, we can also do it at our Long Island
16 City office.

17 But, as we move to later in the agenda
18 with picking possible dates, let's all assume the
19 default, that that meeting is going to be at 100
20 Church. So, when you look at your calendars,
21 please build in the travel time. And I, I, for
22 one, am looking forward to sitting down with many
23 of you in-person after doing it on the screens
24 for all this time.

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2 Other comments or questions? These are,
3 this is a really important development that's
4 going to change the way that we, we meet.

5 Okay. Thank you very much for that
6 overview, Olga. We look forward to receiving --
7 oh, I see a question from -- so the questions, I
8 see a hand raised from Brian Gatens, who's a, a
9 non-, a non-Board member. This particular part
10 of the discussion is not a public comment part of
11 the meeting. But you are more than welcome, Mr.
12 Gatens, to submit any information you have
13 regarding this directly to OATH. You could do so
14 through the OATH website, which has information
15 on how to contact us, and we will take that under
16 advisement as we move forward with this issue.
17 And, as I was about to say, we look forward,
18 Olga, to receiving the materials that you, you
19 and your team circulate. Thank you.

20 Okay. Are there any other, before we
21 move to selecting our next Board meeting, I'd
22 like to ask the members of the Board if they have
23 any other items for today's agenda? Okay.

24 Let's now discuss possible dates for our

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2 next Board meeting. David?

3 MR. KIM: Okay. We have two possible
4 dates, which are August 3, 2023, or August 10,
5 2023.

6 MR. REHMAN: One moment. Let's give
7 folks an opportunity to check their calendars.

8 MR. PECUNIES: Russ Pecunies with DEP.
9 Strongly prefer August 3rd to the 10th.

10 MR. REHMAN: Any other comments from
11 Board members on their availability and
12 preferences for those dates? Shamonda, was that
13 a hand?

14 MS. GRAHAM: I, I second the August 3rd
15 date.

16 MR. REHMAN: Sure. Is anyone currently
17 unavailable on the 3rd of August? Okay, David,
18 why don't we put down August 3rd for our next
19 meeting?

20 MR. KIM: Okay.

21 MR. REHMAN: Okay. Before a motion for
22 adjourn, I do see a question from a member of the
23 public about public comment during the ECB
24 meetings. I'm happy to clarify that the ECB

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2 meetings are business meetings where the Board,
3 itself, will conduct the business of the agenda.
4 It's interactive between the members of the
5 Board. It's not a public comment type of
6 meeting, unless that is otherwise on the agenda.
7 Thank you for the inquiry. I hope that's
8 clarified it. But, of course, as I mentioned,
9 members of the public are entitled and have the
10 opportunity to submit any inquiries they have
11 regarding ECB, or, or OATH's work generally,
12 directly to OATH, and they could do that through
13 a variety of means. The simplest one is through
14 our, our website.

15 Okay. I'd like to request a motion to
16 adjourn today's meeting. Matt, thank you. A
17 second? A second from Elizabeth. David?

18 MR. KIM: Okay. Are there any
19 objections to adjourning the meeting at this
20 time? Hearing none and seeing none, the motion
21 is approved unanimously.

22 MR. REHMAN: Thank you. And before we
23 adjourn, I just want to wish everyone a safe and
24 lovely summer season. I hope some of you get

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some time off between now and when we see you next. And we will see you all in August. And take care, everyone. Thank you.

MS. STATZ: Okay.

MS. KNAUER: Take care, everyone.

MS. STATZ: Bye.

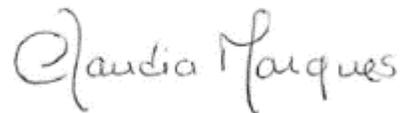
(The board meeting concluded at 10:27 a.m.)

Environmental Control Board, 6/1/2023

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on June 1, 2023, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: June 8, 2023

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Reviewed and corrected by OATH General Counsel

Office June 26, 2023.